

Protest of)
) Date: March 19, 1987
 ILLEANE M. PIERLUISSI)
)
 Solicitation No. 11-6915-87-B-T002) P.S. Protest No. 87-02

DECISION

Illeana M. Pierluissi protests the award under Request for Proposals (RFP) No. 11-6915-87-B-T002 of a contract postal unit (CPU) in Enterprise, FL, to Wise J. Hardin. Ms. Pierluissi contends that the evaluation of the proposals was improper and that her low offer should have been accepted.

The RFP was issued by the Management Sectional Center in Orlando, FL, on November 5, 1986, with an offer due date of December 1. Proposals were received from Ms. Pierluissi and Mr. Hardin. Ms. Pierluissi offered an annual price of \$20,000 and proposed a site away from the center of town in a residential area. Mr. Hardin's proposed price was \$21,500 for a site close to the current facility and in a section of town zoned commercial.

The two offers were evaluated using the scoring system set forth in the solicitation, P.S. Form 7308, Evaluation and Award Criteria.^{1/} The technical proposals were forwarded, without the prices, to an evaluation team consisting of the local postmaster and one of his supervisors. This team gave each proposal the maximum 30 points for service. Because neither offerors' proposed building had been built at the time of the evaluation, each proposal received zero points for facility. The only difference between the offers' raw technical scores was in the location criteria. Location was judged using the evaluation factors set out in the RFP:

- Within specified area.
- Accessibility to customers.
- Availability of parking.

^{1/} The offerors' technical and pricing proposals were evaluated separately. Technical proposals were evaluated on the basis of location (40 points), facility (30 points), and service (30 points). Each raw technical score was converted into a "business score" by dividing the total points awarded to the offeror's technical proposal by the highest points awarded any technical proposal. A price score was determined by dividing the lowest annual price offered by the offeror's price. Final scores were arrived at by adding sixty percent of the business score to forty percent of the price score.

The evaluators gave Ms. Pierluissi 20 points for location and gave Mr. Hardin the maximum 40 points. In commenting on Mr. Hardin's score, the evaluators noted as follows: "Located on main road through Enterprise -- easy access for customers -- adequate parking -- excellent visibility." Under Ms. Pierluissi's comments for location, the evaluators wrote only: "Location is still zoned residential. Would require zoning exception."

The results of the technical evaluation were sent to the contracting officer whose representative then assigned points to the technical and price proposals as set out in the RFP. Ms. Pierluissi's final score was 82.6; Mr. Hardin's was 97.2.^{1/} Hardin was awarded the contract on December 15, 1986. Ms. Pierluissi timely protested the award to the contracting officer who decided the protest in accordance with Postal Contracting Manual (PCM) 2-407.8 e. (2) and found it to be obviously without merit. Ms. Pierluissi then appealed the decision to this office pursuant to PCM 2-407.8 d. (4).

Ms. Pierluissi asserts that the award determination was conducted improperly. She argues that of the three criteria in the technical evaluation, only the location of the proposed permanent site could have been relevant to the award decision. The protester also contends that the information received to evaluate Mr. Hardin's service score could not have provided his offer with a high enough score to offset Ms. Pierluissi's lower price.

Ms. Pierluissi complains that Mr. Hardin's proposed location is significantly inferior to hers. She argues that a site inspection would demonstrate that her location is more

^{2/} These scores were calculated as follows:

Ms. Pierluissi

Business score: $50 / 70$ (points awarded Ms. Pierluissi's technical proposal / highest points awarded any technical proposal) = .71

Price score: $\$20,000 / \$20,000$ (lowest offered annual price / Ms. Pierluissi's annual price) = 1.00

Final score: $.71 \times 60\%$ (sixty percent of business score) + $1.00 \times 40\%$ (forty percent of price score) = $42.60 + 40 = 82.60$.

Mr. Hardin

Business score: $70 / 70$ (points awarded Mr. Hardin's technical proposal / highest points awarded any technical proposal) = 1.00

Price score: $\$20,000 / \$21,500$ (lowest offered annual price / Mr. Hardin's annual price) = .93

Final score: $1.00 \times 60\%$ (sixty percent of business score) + $.93 \times 40\%$ (forty percent of price score) = $60 + 37.20 = 97.20$.

accessible and safer than Mr. Hardin's because of the heavy traffic near Mr. Hardin's site. Ms. Pierluissi notes specific concern about the safety of the children attending the Enterprise Elementary School, which is located near the proposed site, and of postal customers who must park near what she characterizes as a busy intersection. She has submitted a petition, signed by about fifty teachers and parents, and sent to the Volusia County Planning and Zoning Department, objecting to the proposed CPU site because of its proximity to the school.^{1/} Ms. Pierluissi asserts that the choice of Mr. Hardin's site was "in flagrant disregard of the needs and safety concerns of the residents of Enterprise, Florida." She contends that the award decision was arbitrary, capricious, in violation of prescribed Postal procedures and, because of her sex, discriminatory.^{1/}

In his report to this office, the contracting officer denies any claim that postal regulations were not followed, that the decision was arbitrary or capricious, or that he discriminated against the protester. He agrees with Ms. Pierluissi that the location criteria was necessarily the deciding factor for the award because both proposals received the greatest number of points possible for service, and neither offeror received points on the basis of facility. The contracting officer notes that, because of the greater weight given to the business score, the twenty point differential between Mr. Hardin's and Ms. Pierluissi's business scores was more than enough to offset Ms. Pierluissi's lower price.^{1/}

^{3/} The protest file also includes a letter from the successful offeror to the contracting officer which indicates that a petition in favor of the proposed CPU site was circulated in response to the petition opposed. According to this letter, the "for" petition "has almost three times" the number of signatures as the "against" petition.

^{4/} The protester also claims the contracting officer took longer than the five working day period allowed by the Postal Contracting Manual to answer her protest. She states that she mailed her protest December 18 by certified mail, return receipt requested, but that she never received the return receipt. The contracting officer states that he received Ms. Pierluissi's protest on December 23, 1986. He suggests the protest letter may have been delayed because it had been addressed to ZIP Code 32662-9998 instead of 32862-9998, and had gone to Lochloosa, FL, where it was postmarked on Friday, December 19. The contracting officer states that the return receipt was mailed on December 23, and that he took five working days after receipt to answer her protest, as allowed by PCM 2-407.8. The evidence here shows that the contracting officer complied with this regulation. His office date stamped the letter on December 23, and, other than Ms. Pierluissi's bare allegation, there is no reason to believe he received the letter any earlier. He sent out his decision finding the protest obviously without merit on December 31, five working days after receipt. In addition, the protester has submitted no evidence that she was prejudiced by any delay. Cf. Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984.

^{5/} The contracting officer also indicates that Ms. Pierluissi did not own her site at the time of contract award, as "will own" was typed on her offer in the space provided for indicating ownership. Ms. Pierluissi disputes the contracting officer's statement, asserting that she had purchased the site between the submission of her offer and the award of the contract. However, there is no evidence in the record that she brought this purchase to the attention of the contracting officer so that it could be used in the evaluation process. The contracting officer cannot be expected to take into account information of which he was not made aware. In any case, there is no evidence that the lack of ownership played any role in the

In response to the protester's contention that her location is better suited for the CPU than Mr. Hardin's, the contracting officer notes that the technical evaluators had a combined 25 years of experience in the Orange City/Deltona area. He states that the team members were very knowledgeable as to the needs of the area's Postal customers, and that they were not of the opinion that the location of the CPU would create a traffic or safety hazard.

In a negotiated procurement such as this, the successful contractor is selected in accordance with the evaluation formula set out in the RFP. William Anderson, P.S. Protest No. 86-59, August 7, 1986; Grethe's Inc., P.S. Protest No. 86-89, November 21, 1986. The assignment of numerical scores by the evaluation committee members is an attempt to quantify essentially subjective judgments. This is an accepted procedure. Management Concepts, Inc., P.S. Protest 86-29, July 10, 1986; Book Fare, Inc., P.S. Protest No. 80-29, July 3, 1980. Our review of such an evaluation is limited to whether the evaluation was arbitrary or in violation of any applicable procurement regulations. We do not substitute our judgment for that of the evaluators or make a new review of the evaluation. William Anderson, *supra*; Grethe's, Inc., *supra*; Book Fare, Inc., *supra*.

Ms. Pierluissi's first argument, that Mr. Hardin's technical proposal was overrated in the facility and service categories, is unsupported by the record. Neither offer received points for facility, and both offers were rated equally for service. There is no reason to believe that Mr. Hardin's proposal should not have received the points it was awarded for the service criteria.

Ms. Pierluissi also complains that she was denied the award although her price was lower than Mr. Hardin's. It is well established in negotiated procurements that awards are not required to be made solely on the basis of the lowest price. Where, as here, the solicitation advises offerors that technical considerations are more important than price, there is no basis for objecting to an award solely because the awardee did not submit the lowest priced proposal. H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984; Penny H. Clusker, P.S. Protest No. 80-37, August 37, 1980. Here, the record shows that the contracting officer accepted the judgments of the technical evaluation committee, and followed the precise evaluation criteria listed in the RFP in assigning points to determine award.

The protester's central contention is that the evaluation of the location criteria for the technical proposals was improper. Certainly there is a disagreement between the protester and the evaluators, and perhaps within the community as a whole, as to the merit of Mr. Hardin's site.^{1/} However, such a difference of opinion is not sufficient to

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contracting officer's decision.

^{1/} Ms. Pierluissi suggests that a physical comparison of the two sites would support her case. This office is not an investigative body and does not conduct site inspections. "[T]he function of this office is

overturn the evaluators' judgment. Management Concepts, Inc., supra; Emily S. Kenderick, et al., P.S. Protest Nos. 80-48, 80-51, October 28, 1980. The evaluators considered ease of access, customer convenience, and visibility to customers in making their decision. Although they were not as specific in their comments as might have been desirable, there is no reason to believe they did not take the same factors into account in evaluating each proposal. The comments suffice to show that the evaluators thought Mr. Hardin's location to be excellent. It is reasonable to conclude that they did not feel Ms. Pierluissi's site provided the same convenience, ease of access, and visibility to customers as Mr. Hardin's.^{1/}

The evaluators' comments also indicate that they considered location in a residential area to be a disadvantage from the standpoint of zoning restrictions. They note that Mr. Hardin's site had been approved as commercial, but that Ms. Pierluissi's was zoned residential. It is not clear from the record whether the evaluators were aware that Mr. Hardin's site would be considered to fall under the enumerated "Permitted Special Exceptions" to the "General Commercial Classification," and would therefore require a hearing before the zoning board.^{1/} While there is no evidence that this factor was considered in the scoring of Mr. Hardin's proposal, there is also no evidence that Ms. Pierluissi was prejudiced by any failure to have reduced Mr. Hardin's technical score for needing a special exception. Cf. Management Concepts, Inc., supra. If indeed this requirement was overlooked and Mr. Hardin's score should have been reduced somewhat, the evaluators would have had to have taken off 18 or more points from Mr. Hardin's proposal in order for Ms. Pierluissi to have received award. The evidence shows that the evaluators preferred Mr. Hardin's site and it is unlikely that his proposal would have been so severely penalized.

Finally, Ms. Pierluissi states that she suspects that both her offer and her protest to the contracting officer were discriminated against because of her sex. She has offered no evidence in support of this assertion, and on the record before us we can find no indication that she was discriminated against or treated unfairly. A mere assertion of discrimination without more is insufficient to sustain the protest. See Book Fare, Inc., supra.

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the limited one of resolving bid protests based upon written reports provided by protesters and contracting officers." Haselrig Construction, On Reconsideration, P.S. Protest No. 76-2, March 22, 1976.

^{1/} That the evaluators were not unfair or arbitrary in their evaluation but rather felt that the protester's location was inferior to Mr. Hardin's is supported by the equal maximum scoring given the offerors in the service category.

^{2/} The record indicates that Mr. Hardin was not aware of this requirement until after contract award when he applied for a building permit. He informed the contracting officer on February 3 that a hearing before the zoning board would be necessary.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Checked against original 2/17/93 WJJ]